IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1213 of 1999

in

SPECIAL CIVIL APPLICATIONNo 11282 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUBHAI KHODABHAI BOHARIA

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Appellant

MR JOSHI,ASSTT.GOVT.PLEADER for Respondent No. 1, 3

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 30/09/1999

ORAL JUDGEMENT

This appeal is filed against dismissal of Special Civil

Application No. 11282 of 1998 by the learned Single Judge on August 17, 1999.

The appellant was the original petitioner. By an order dated December 5, 1998, he was detained by the Commissioner of Police, Rajkot City, Rajkot under the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as `the Act'). In the order of detention, it was alleged that with a view to preventing the detenu from acting in a manner prejudicial to maintenance of public order, it was necessary to detain him and since the detaining authority was satisfied , an order of detention was passed. On the same day, grounds of detention were supplied to the detenu in which, it was inter alia alleged that the detenu can be said to be "property grabber". He had, taking undue advantage of the situation of open plots in the city of Rajkot which were covered under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 and were under Rajkot Municipal Corporation, put up certain constructions . By taking certain amounts from several persons, he illegally sold and/or disposed them of. The detenu thus indulged in anti social activities . It was also alleged that witnesses do not come forward under the apprehension that they may be severely dealt with by the detenu and hence, no complaints could be filed against him. It was , however, stated that certain cases were filed against him and eight cases have been enumerated in the grounds of detention . All came to be filed on a single day i.e. on November 16, 1998. In the grounds, it was further stated that two witnesses had come forward and stated before the police authorities that they were cheated by the detenu . From witness No.1, detenu is said to have received an amount of Rs. 4,000/- for which a plot was sold by the detenu on November 4,1998 . When the witness came to know that the plot did not belong to the detenu, he approached the detenu and demanded a written document for said plot. The detenu however, refused to give any document and when the amount was demanded back by the witness, he was threatened. In the meantime, other persons assembled and the witness could save his life. Another witness had also stated that on October 15, 1998, he had purchased a plot of 60 Sq.Yds from the detenu by paying an amount of Rs. 500/- as earnest money. But subsequently, he came to know that the plot did not belong to the detenu. He, therefore,demanded for refund of the amount of earnest money which the detenu refused and he was beaten by the detenu with knife. The detaining authority has stated that he was satisfied regarding correctness of the statements made by the witnesses. He was further satisfied that in the interest

of public, names and addresses of the witnesses should not be disclosed under Sub-Section (2) of Section 9 of the Act.

Being aggrieved by the order of detention , the detenu filed the above petition. Several contentions were raised before the learned Single Judge.It was submitted that there was total non-application of mind on the part of the detaining authority in passing the order of detention inasmuch as though in one breath, it was stated that witnesses were not coming forward ,but immediately in the next sentence, it was stated that as many as eight complaints were filed against the detenu. It was also contended that certain documents which were said to have been supplied to the detenu were in English language particularly pages 13 to 15 of the paper book and even though demanded, no translation was supplied. Similarly, panchnamas were also not supplied. The case did not envisage maintenance of "public order" and at the most averments can be said to be relating to maintenance of "law and order" and that power of detention under the Act could not have been exercised. It was urged that all complaints were filed on one single day i.e. on November 16, 1998 and both the statements were recorded on December 3, 1998 which was not believable. According to the detenu, though verification was said to have been made by the detaining authority on December 5,1998, on the same day, order of detention was passed. There is,therefore, non-application of mind and mechanically, the order came to be passed by the detaining authority. It was also submitted that neither the detenu can be said to be "property grabber" nor "dangerous person" within the meaning of Section 2 (h) and 2 (c) respectively and hence, no action could have been taken against him.

No affidavit was filed on behalf of the detaining authority before the learned Single Judge. The learned Single Judge considered the facts and circumstances of the case and observed that translation of documents (pages 13 to 15) was supplied in Gujarati. Since Panchnamas were not prepared, there was no question of supply of panchanama and accordingly, that contention had no force. Regarding non-application of mind regarding filing of complaints and witnesses not coming forward, the learned Single Judge drew distinction between the two viz. "property grabber" and "dangerous person" . In the opinion of the learned Judge, activities in respect of eight FIRs registered pertained against the detenu, the detenu was as "proper grabber" and it was true that in respect of such activity, complaints were filed but regarding other activity viz. as "dangerous person", no

witnesses came forward and hence to that extent, the satisfaction said to have been arrived at by the detaining authority cannot be said to be vitiated. Though no affidavit was filed, the learned Single Judge considering the file which was shown to the Court, observed that as there was no violation of procedural safeguards, it cannot be said that the satisfaction was vitiated or that it was artificial. Accordingly, the petition was dismissed.

On September 9, 1999, we issued notice as to admission as well as final hearing returnable on September 18,1999 as the detenu was in jail since last about nine months. On September 22, 1999, on behalf of the AGP, time was sought and the matter was kept on September 27, 1999. Today, the matter is called out for final hearing.

Before us also, all the contentions which were raised before the learned Single Judge were reiterated by the learned counsel for the appellant. It is, however, not necessary to deal with all of them, as in our opinion, only on one ground, the appeal deserves to be allowed.

As is clear, so far as the activities of the detenu in respect of sale of plots are concerned, complaints have been registered. The learned Single Judge also observed in the order that eight complaints were already filed. It was strenuously argued by the learned counsel that they cannot be relied upon on the ground that all them were filed on one day i.e., on November 16, 1998. Obviously, this Court cannot enter into correctness or otherwise of such complaints. But the fact remains that in respect of the said activities, law has taken its course.

Regarding two statements, our attention was invited by the learned counsel for the detenu to a decision of the learned Single Judge in a similar matter in Special Civil Application No.8682 of 1998 decided on July 12, 199 in which it was stated that if the detaining authority filed an affidavit stating therein that he had carefully examined the material placed before him and had personally verified the genuineness and correctness of the statements of witnesses and the fear expressed by them ,and if order of detention was passed within a short span, it cannot be said that there was genuine subjective satisfaction on his part for detaining a person. In that case, both the statements were recorded on August 27 and 28, 1998 respectively and order of detention was passed on August 31, 1998. Thus, within a period of 3-4 days, order was passed. The learned Single Judge held that

there was non-application of mind and the subjective satisfaction was vitiated. In the instant case, two statements were recorded on December 3, 1998 which were verified on December 5, 1998 and on the same day, order of detention was passed. Hence, prima facie, ratio laid down in the above judgment would be applicable. But the learned Single Judge distinguished that judgment on the ground that the detaining authority has specifically stated that he had summoned the witnesses before him for verification and has recorded his personal satisfaction in respect of the statements made by the witnesses. Be it noted that in the instant case, neither an affidavit was filed by the detaining authority before the learned Single Judge nor before this Court in appeal. But even otherwise also, the appeal deserves to be allowed on the ground that in respect of two statements, in the former, there was mere criminal intimidation. It would, therefore, neither fall under Chapter XVI nor under Chapter XVII of the Indian Penal Code, as it would be under Section 506 (2) which is in Chapter XXII of IPC.Hence, there is only one statement wherein a person was injured. It would undoubtedly fall under Chapter XVI. But two things must be borne in mind. Firstly, the incident related to the activity of the detenu as "property grabber" in respect of which,as many as eight complaints have been filed. Secondly, in view of one complaint, the detenu cannot be said to be "dangerous person" within the meaning of Section 2 (c) of the Act.

Section 2 defines "dangerous person" which reads as under:

> "(c) "dangerous person" means a person, who either by himself or as a member or leader of a gang habitually commits, or attempt to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V or the Arms Act, 1959."

Since there is only one complaint, it cannot be said that the detenu is indulging in commission of offences punishable under Chapter XVI or Chapter XVII of the Code and no order of detention could have been passed against him.

For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. Order or detention passed by the detaining authority deserves to be quashed and set aside and it is hereby set aside. Appellant-detenu is ordered to be released forthwith, if not required in any other case. No order as to costs. Direct service permitted.

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